

9 GCA CRIMES AND CORRECTIONS
CH. 82 LOSS AND RESTORATION OF RIGHTS
INCIDENT TO CONVICTION OR IMPRISONMENT

CHAPTER 82
LOSS AND RESTORATION OF RIGHTS INCIDENT
TO CONVICTION OR IMPRISONMENT

- § 82.10. Basis for Legal Disqualification Disability.
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- § 82.25. Discretionary Lifting of Disqualifications by Parole Board.

NOTE: References to Director of Public Safety changed to *Chief of Police*, and references to Department of Public Safety changed to *Guam Police Department* pursuant to P.L. 17-78:1, which repealed 5 GCA § 3103 providing for the Department of Public Safety, and reenacted it to establish the Guam Police Department.

§ 82.10. Basis for Legal Disqualification or Disability.

(a) No person shall suffer any legal disqualification or disability because of his conviction of a crime or his sentence on such conviction, unless the disqualification or disability involves the deprivation of a right or privilege which is:

- (1) necessarily incident to execution of the sentence of the court;
- (2) provided by this Title;
- (3) provided by a statute other than this Title, when the conviction is of a crime defined by such statute; or
- (4) provided by the order or regulation of an agency or official exercising a jurisdiction conferred by law, or by the statute defining such jurisdiction, when the commission of the crime or the conviction or the sentence is reasonably related to the competency of the individual to exercise the right or privilege of which he is deprived.

(b) Proof of a conviction as relevant evidence upon the trial or determination of any issue, or for the purpose of impeaching the convicted person as a witness is not a disqualification or disability within the meaning of this Chapter.

SOURCE: See G.P.C. § 673; *M.P.C. § 306.1; N.J. § 2C:51-1.

CROSS-REFERENCES: See Uniform Act on Status of Convicted Persons (1964); § 82.15 -Forfeiture of public office.

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COMMENT: § 82.10 essentially restates a fact that any legal disqualification resulting from conviction must be authorized by law, or implied by law.

A Code replaced by *Title* to reflect the fact that this Title 9 was originally the A Criminal & Correctional Code and that the original references were to that Code, not to the entire Guam Code Annotated.

§ 82.15. Forfeiture of Office by Public Official.

(a) A person holding any public office who is convicted of a crime shall forfeit such office if:

(1) he is convicted under the laws of this Territory of a felony or under the laws of another jurisdiction of a crime which, if committed within this Territory, would be a felony; or

(2) he is convicted of a crime involving malfeasance in such office, or dishonesty.

(b) The forfeiture provided in Subsection (a) shall take effect upon sentencing unless the sentencing court or an appellate court, for good cause shown, orders a stay of such forfeiture. If the conviction is reversed, the person shall be restored to his office with all the rights, emoluments and salary thereof from the date of forfeiture.

SOURCE: See G.P.C. §§ 10, 68, 74, 96, 673; *M.P.C. § 306.2; *N.J. § 2C:51-2.

COMMENT: § 82.15 is comparable to former § 673 of the Penal Code but predicates forfeiture on conviction of certain kinds of offenses, not on a term of sentencing imposed. Unlike former Penal Code §§ 68, 74 and 96, neither Section nor Code generally provides for permanent disqualification. Such a sanction is too harsh and inflexible; obviously, a prior conviction would greatly influence a decision to appoint or elect but it need not automatically disqualify.

It should be noted that this Section does not necessarily supersede other sections of the Code, notably the 3 GCA § 8104 (disqualification for violation of campaign expenditure law), 4 GCA § 9103 (relative to dismissal for strikes against the Government) and 5 GCA § 22401(c) (relative to discretionary dismissal for illegal expenditure). However, 3 GCA § 6103 has been amended to exclude from disqualification for a legislative seat persons convicted of crimes. Note that 48 U.S.C. § 1423f lists as a disqualification for a Senator the following:

A... or who has been convicted of a felony or of a crime involving moral turpitude and has not received a pardon restoring his civil rights.

It is doubtful that the Organic Act would view this Chapter as sufficient to permit a convicted felon or a person convicted of other stated crimes, to sit in the Legislature.

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2012 NOTE: P.L. 31-255:3(c)&(d) (Dec. 11, 2012) amended references to 3 GCA § 6105 and § 8129 [in the above “COMMENT”] changed to § 6103 and § 8104, respectively.

§ 82.20. Jury or Voting Disqualification for Duration of Sentence Only.

Notwithstanding any other provision of law, a person who is convicted of a crime shall be disqualified:

(a) from voting in a primary or general election if and only so long as he is committed under a sentence of imprisonment; and

(b) from serving as a juror until he has satisfied his sentence.

SOURCE: See Guam § 673; M.P.C. § 306.3; N.J. § 2C:51-3.

COMMENT: Section 82.20 follows Penal Code § 673 and expands upon it in Subsection (b). While a person is prohibited from voting only while he is actually in prison, that same person is disqualified from serving as a juror for as long as any part of his sentence remains, including probation, suspended sentence, or parole.

§ 82.25. Discretionary Lifting of Disqualifications by Parole Board.

(a) The board of parole may remove any disability or disqualification imposed by law on a person found guilty of crime, if such person has completed the maximum term of his sentence or completed a period of suspension or probation as provided by § 80.64, or has been discharged from parole pursuant to § 80.83, on petition of such person under the terms of this Section.

(b) A person seeking removal of disabilities or disqualifications under this Section shall petition the board therefor. The board shall thereupon cause a copy of such petition to be sent to the Attorney General, Guam Police Department, and the sentencing judge. Within six weeks of the receipt of the copy of such petition, the appropriate officials may make written recommendations or comments regarding the petition to the board, but failure to make such response shall not stop the procedure in the case. The board shall also cause to be brought before it, all available presentence and probation reports and records of all department of corrections and of the board of parole regarding the petitioner. The board in its discretion may hold a hearing on such petition at which it may interview the petitioner and consider such matters as it deems appropriate.

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(c) Within six months, the board shall determine whether to exercise its discretion to remove any disqualification or disability on the petitioner, and if it does so act, shall issue a certificate of such removal to the petitioner.

(d) The removal of disqualifications or disabilities shall not constitute a pardon nor preclude any person from taking into consideration the fact that the petitioner has been found guilty of a crime where such fact may have previously lawfully be considered.

SOURCE: cf. M.P.C. § 306.6; *Mass. ch. 264, § 8; cf. N.J. 2C:51-4.

CROSS-REFERENCES: ABA Standards for Criminal Justice Probation § 4.3 (Approved Draft 1970).

COMMENT: While § 82.25 is based on a recommendation of the Massachusetts Commission, its inclusion here seem questionable. No expunging of the record occurs. This Section, does not, and cannot, constitute a pardon. Any person who may have taken the conviction into consideration prior to the board's action may still do so. And it is questionable whether the Legislature can, by this Section, delegate to the parole board what amounts to a legislative act in removing disqualifications which other Sections of law have made permanent. Finally, this Section may, despite disclaimers, constitute a form of clemency reserved to the Governor by the Organic Act.
